

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	EB Docket No. 03-152
)	
WILLIAM L. ZAWILA)	Facility ID No. 72672
)	
Permittee of FM Station KNKS,)	
Coalinga, California)	
)	
AVENAL EDUCATIONAL SERVICES,)	Facility ID No. 3365
INC.)	
)	
Permittee of FM Station KAAX,)	
Avenal, California)	
)	
CENTRAL VALLEY EDUCATIONAL)	Facility ID No. 9993
SERVICES, INC.)	
)	
Permittee of FM Station KYAF,)	
Firebaugh, California)	
)	
H. L. CHARLES D/B/A FORD CITY)	Facility ID No. 22030
BROADCASTING)	
)	
Permittee of FM Station KZPE,)	
Ford City, California)	
)	
LINDA WARE D/B/A LINDSAY)	Facility ID No. 37725
BROADCASTING)	
)	
Licensee of FM Station KZPO,)	
Lindsay, California)	

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S OPPOSITION TO CENTRAL VALLEY AND AVENAL'S
REQUEST TO APPEAL *ORDER*, FCC 16M-01**

1. On January 12, 2016, the Presiding Judge issued a *Memorandum Opinion and Order* stating his intention of adding several issues to the above-captioned matter.¹ On January 14, 2016, Central Valley Educational Services, Inc. (Central Valley) and Avenal Educational Services, Inc. (Avenal) – as represented by Mr. Couzens – filed a request pursuant to Section 1.301(b) of the Commission's rules to appeal this *Order*.² In particular, Central Valley and Avenal request to appeal only those portions of the *Order* directed to (i) whether Central Valley and Avenal were qualified at the time they filed applications for noncommercial educational Stations KYAF (FM) and KAAX (FM); (ii) whether Central Valley and/or Avenal lacked demeanor or misrepresented facts of their qualifications for holding Commission authorizations; and (iii) whether a forfeiture should be issued against Central Valley and/or Avenal for willfully violating Section 75.503(a) of the Commission rules.³ On February 19, 2016, the Presiding Judge requested that the Enforcement Bureau (Bureau) respond to the Request.⁴ For the reasons discussed below, the Chief, Enforcement Bureau, through his attorneys, respectfully opposes Central Valley and Avenal's Request.

2. First, there has been no determination that the Central Valley and Avenal entities represented by Mr. Couzens are in fact the permittees named in this proceeding. Indeed, the Presiding Judge has repeatedly recognized that there remain substantial questions of fact concerning the ownership and control of these companies that must be resolved before this case

¹ See *Memorandum Opinion & Order*, FCC 16M-01, (ALJ, rel. Jan. 12, 2016).

² See Request for Permission to File Appeal (47 C.F.R. Sec. 1.301(b)), filed Jan. 14, 2016 (Request).

³ See Request at 2; see also *Order*, FCC 16M-01, at 4, ¶ 12.

⁴ See Email from Presiding Judge to the Parties, EB Docket No. 03-152, dated Feb. 19, 2016.

can proceed.⁵ Moreover, the Presiding Judge has recognized that discovery is necessary before any such determination can be made.⁶ Neither Central Valley nor Avenal (as represented by either Mr. Couzens or Mr. Zawila) has responded to any of the Bureau's discovery requests directed to this question. In fact, Central Valley and Avenal (as represented by Mr. Couzens) recently filed a motion requesting protection from having to respond to any of the Bureau's discovery requests and a stay of all discovery.⁷ Thus, the question of who owns and controls Central Valley and Avenal, and who in fact properly represents them in this hearing, remains unsettled. As a result, it is unclear that Mr. Couzens has the authority to act on behalf of Central Valley and Avenal in making the instant Request. For this reason alone, the Request should not be granted.

3. Second, as discussed in detail below, Central Valley and Avenal fail to present any showing that their appeal would present a new or novel question of law or policy or that the Presiding Judge's *Order* would be likely to require remand should the appeal be deferred and raised as an exception.⁸ Rather, Central Valley and Avenal primarily argue that they are entitled to appeal the Presiding Judge's addition of the issue of their qualification because they were not subject to Section 73.503 of the Commission's rules.

4. Specifically, Central Valley and Avenal confusingly argue – without citation to any rule or Commission precedent – that Stations KYAF (FM) and KAAX (FM) are not subject to Section 73.503 because Central Valley and Avenal originally filed in the non-reserved band

⁵ See, e.g., *Order*, FCC 15M-21 (ALJ, rel. June 4, 2015), at 3; *Order*, FCC 16M-01, at 2, §§ 3-4.

⁶ See, e.g., *Order*, FCC 16M-01, at 5 (ordering discovery to commence).

⁷ See Motion for Protective Order (47 C.F.R. Sec. 1.313), filed Feb. 8, 2016. The Bureau opposed this motion. See Enforcement Bureau's Opposition to Motion for Protective Order, filed Feb. 11, 2016. Central Valley and Avenal (as represented by Mr. Zawila) subsequently joined this motion. See Joinder In Motion For Protective Order (47 C.F.R. § 1.313), filed Feb. 20, 2016.

⁸ See 47 C.F.R. § 1.301(b).

and thus could later change the status of these Stations from noncommercial (or what they are now referring to as non-profit) to commercial (or what they are now referring to as for-profit) at any time.⁹ Central Valley and Avenal appear to argue that Section 73.503 somehow applies only to those stations that must maintain non-commercial status. However, there is nothing in either the Commission's rules or precedent that so limits the application of Section 73.503. This argument is a red herring.

5. The possibility that Central Valley and Avenal could have later changed the status of Stations KYAF (FM) or KAAX (FM) does not alter the fact that, at the time Central Valley and Avenal applied for construction permits for these Stations (and the licenses to cover these permits), these Stations were designated as noncommercial. As such, Central Valley and Avenal were governed by the requirements of Section 73.503(a) and the addition of an issue directed to whether they met those requirements was proper. Accordingly, Central and Avenal have failed to present any basis, as required pursuant to Section 1.301(b) of the Commission's rules, for why the Presiding Judge's ruling "would likely require remand."

6. Third, Central Valley and Avenal's assertion that the Presiding Judge erred in applying certain low power FM (LPFM) precedent is unfounded and offers no basis for an appeal. The precedent interpreting the requirements of Section 73.503 makes clear that an applicant for a noncommercial education FM station – such as Central Valley and Avenal – must be a "non-profit organization with an educational purpose" and "must certify its eligibility to own and operate such station *at the time it files its application*."¹⁰ As the Bureau noted above, there is nothing in either the Commission's rules or precedent that exempts non-commercial

⁹ See Request at 3-6.

¹⁰ See, e.g., *Hammock Environmental and Educational Community Svcs.*, 25 FCC Rcd 12804, 12807 (Sept. 10, 2010) (emphasis added) (citation omitted).

educational entities who apply in the non-reserved band from these requirements. The LPFM licensing rules similarly require that an applicant be a “nonprofit educational organization.”¹¹ Thus, the LPFM cases at issue offer additional guidance to the Presiding Judge on how to interpret the “nonprofit educational organization” requirement for the stations at issue. There can be no dispute that the Presiding Judge maintains the discretion to consider persuasive authority such as the LPFM cases in his determinative process.

7. Lastly, Central Valley and Avenal suggest an appeal is proper because there is no basis for the Presiding Judge to have added a misrepresentation issue against Central Valley and Avenal.¹² In support, Central Valley and Avenal rely primarily on the argument that, even if they may have represented to the Commission that they were incorporated entities when they were not, such misrepresentations were not material because, as applicants in the non-reserved band, they were not required to be incorporated at the time of their applications. However, as the Bureau articulated above, there is no distinction between the application requirements for a noncommercial educational station in the reserved and non-reserved bands. Thus, it is entirely appropriate for the Presiding Judge to add an issue to the case inquiring as to whether Central Valley and Avenal indicated to the Commission that they were incorporated at the time they applied for construction permits for Stations KYAF (FM) and KAAX (FM) (and the licenses to cover those permits), and for many years thereafter, before they were in fact incorporated under the laws of any state.

8. In addition, to the extent Central Valley and Avenal also appear to suggest that it was improper for the Presiding Judge to add the misrepresentation issue because the alleged

¹¹ See, e.g., 47 C.F.R. § 73.853(a)(1).

¹² See Request at 8-9.

misconduct occurred more than ten years ago, this argument, too, is baseless.¹³ There is no Commission policy precluding inquiry into – and prosecution of – conduct that occurred more than ten years ago. The Commission’s *Policy Regarding Character Qualifications in Broadcast Licensing* suggests only that, *as a general matter*, the Commission should impose a 10-year limitation when considering past conduct in the context of examining an applicant’s (or, in this case, a permittee’s) character.¹⁴ However, the Commission retains the discretion to investigate and consider conduct that occurred beyond that time period if the circumstances warrant.¹⁵

9. Here, the circumstances so warrant. In fact, the only reason the issues in the Order To Show Cause, Notice of Opportunity For Hearing, and Hearing Designation Order¹⁶ have not yet been fully prosecuted is because, **at the request of Central Valley and Avenal (and the other parties to the proceeding)**, Administrative Law Judge Steinberg stayed the proceeding in September 2003 and again, indefinitely, in March 2004.¹⁷ This stay was not lifted until the Presiding Judge’s recent *Order*, FCC 15M-21,¹⁸ after which time the Bureau expeditiously re-commenced its prosecution of this case.¹⁹ Central Valley and Avenal cannot

¹³ See *id.* at 10.

¹⁴ See *Policy Regarding Character Qualifications in Broadcast Licensing*, Report, Order and Policy Statement, 102 FCC 2d 1179, 1229 (1986) (emphasis added).

¹⁵ In the Commission’s 1990 *Policy Statement and Order* concerning character qualifications, it modified certain of the policies it enunciated in the Commission’s 1986 Character Policy, including allowing the Commission to consider evidence of any conviction for misconduct involving a felony, regardless of when the conduct occurred. See *Policy Statement and Order*, 5 FCC Rcd 3252 (1990); see also *Titus*, 29 FCC Rcd 14066, 14071 (2014) (concluding that the Commission could consider convictions that occurred more than ten years before the Order to Show Cause).

¹⁶ See *In re Zawila*, Order To Show Cause, Notice of Opportunity For Hearing, and Hearing Designation Order, 18 FCC Rcd 14938 (Jul. 16, 2003).

¹⁷ See *Order*, FCC 03M-39 (ALJ, rel. Sept. 12, 2003); *Order*, FCC 04M-09 (ALJ, rel. Mar. 5, 2004).

¹⁸ See *Order*, FCC 15M-21, at 2.

¹⁹ Notably, Central Valley and Avenal thwarted the Bureau’s first efforts to obtain discovery in this matter, refusing to provide a substantive response to any of the Bureau’s requests for documents or interrogatories. The Bureau was forced to file a motion to compel. See Enforcement Bureau’s Motion To Compel Avenal Educational Services, Inc. and Central Valley Educational Services, Inc. To Provide Complete Responses To Outstanding Discovery Requests, filed Aug. 21, 2015. This motion is pending before the Presiding Judge.

reasonably claim to have been prejudiced by a delay that was precipitated by their own actions. To deny the Bureau the opportunity to investigate the allegations against Central Valley and Avenal on the grounds that they are time-barred when Central Valley and Avenal asked for the proceeding to be delayed would make a mockery of the Commission's hearing process. For this reason, as well, the instant Request should be denied.

Conclusion

10. For the reasons stated above, the Bureau respectfully requests that the Presiding Judge deny Central Valley and Avenal's Request to file an interlocutory appeal of *Order*, FCC 16M-01.

Respectfully submitted,

Travis LeBlanc
Chief, Enforcement Bureau



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February 24, 2016


CERTIFICATE OF SERVICE

Alicia McCannon, an Enforcement Analyst in the Enforcement Bureau's Investigations and Hearings Division, certifies that she has on this 24th day of February, 2016, sent copies of the foregoing "ENFORCEMENT BUREAU'S OPPOSITION TO CENTRAL VALLEY AND AVENAL'S REQUEST TO APPEAL *ORDER*, FCC 16M-01" to:

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